

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the
Application of Azza Gad and Manar Gad
for a License to Provide Child Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Steve M. Mihalchick on September 21, 2005, at the Office of Administrative Hearings, 100 Washington Avenue S., Suite 1700, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing.

Rebecca Morrisette, Assistant County Attorney, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415, appeared on behalf of the Hennepin County Human Services Department and the Department of Human Services.

The Applicant, Azza Gad, 6745 Hallmark Drive, Eden Prairie, MN 55346-2542, appeared on her own behalf without counsel. Her daughter, Manar Gad, did not appear. Faten Mahmoud appeared with the Applicants to assist in translating Azza Gad's testimony.¹

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

¹ Ms. Mahmoud is Azza Gad's sister-in-law.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Did the Department properly conclude that Azza Gad and Manar Gad should not be issued a license to provide family child care because Azza Gad gave false or misleading information in the application process?

The Administrative Law Judge concludes that Azza Gad did not provide false or misleading information on her application, but did provide some misleading information by telephone, which she partially corrected, and that Department of Human Services should grant the license application.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Azza Gad and Manar Gad live in Eden Prairie, Minnesota. Azza Gad is married to Medhat Gad, and they have three children, Manar (age 18), Hatem (age 17), and Angie (age 8). They all reside in the proposed daycare premises.²

2. On August 26, 1999, Azza Gad confronted her husband over her belief that he was engaged in an extramarital affair (hereinafter “the 1999 incident”). An argument ensued, and Azza Gad poured lighter fluid on herself and began ostensibly searching for matches or a lighter. At the time, family members smoked and lighters were readily available.³ Azza Gad was not actually attempting to harm herself. Rather, she was demonstrating, in an excessive manner, her reaction to the pain she felt her husband had inflicted upon her. She did not intend to carry out any self-harm. A member of the household intervened by calling 911 and contacting relatives who lived nearby.⁴

3. Azza Gad was taken to Methodist Hospital and transferred to Abbott-Northwestern Hospital for psychological evaluation. Hospital staff, including a social worker, psychiatrist, therapist, and an interpreter, met with the family for a group session. On September 1, 1999, the Abbott-Northwestern social worker indicated that Azza Gad was being discharged. The social worker noted that Azza Gad was considered as not posing a risk of harm to herself or others. The only ongoing treatment was a prescription of an antidepressant.⁵ The only follow-up to the incident

² Ex. 2.

³ Testimony of Azza Gad.

⁴ The record variously identifies the person who called 911 as Azza's son Hatem, then aged 10, her daughter Manar, then aged 11, or her husband.

⁵ Ex. 3.

consisted of two visits to a psychologist.⁶ There has been no similar incident since that time.

4. Hennepin County initiated a child protection investigation because children were present during the 1999 incident. The investigator contacted the social worker at Abbott-Northwestern at various times. On September 8, 1999, the social worker indicated that there was no ongoing recommendation regarding Azza Gad. Hennepin County Child Protection concluded that maltreatment occurred through Azza Gad failing to protect her children from a dangerous or threatening condition.⁷ The maltreatment finding was not appealed.

5. In November 2004, Azza Gad submitted an application to Hennepin County Children and Family Services (the County) for a license to provide child care from her home.⁸ Because she is not a native English speaker, Azza Gad was assisted by a relative in completing the application form.⁹ She also completed a background study form inquiring into various aspects of her past. She responded “No” the question:

Have you or anyone in your residence or anyone working in your child care received counseling from any public or private social service agency, therapist, mental health center, correctional/probation officer, chemical dependency counselor, other?¹⁰

6. While processing Azza Gad's application, the County reviewed the Child Protection file from the 1999 incident. On February 24, 2005, Azza Gad called the County and inquired as to why the licensing process was taking so long. Janet Remington, a licensing worker for the County, asked if Azza Gad was aware of any Child Protection matter that she had been involved in and she responded, “No.”¹¹ Remington asked if she was taking, or had taken any anti-depressant medication and Azza Gad responded that she only took medication for diabetes. Remington asked if she remembered any particular incidents from 1999 that were particularly difficult times in her life and Azza Gad responded. “No.”¹²

7. On Monday, February 28, 2005, Azza Gad called Remington and told her that she remembered “a small problem between myself and my husband.”¹³ She provided no further information about the 1999 incident at that time.

8. On March 11, 2005, Hennepin County recommended that the Department of Human Services (DHS or Department) deny Azza Gad's application based on the maltreatment finding. Remington opined that “Ms. Gad's past behavior and her current

⁶ Testimony of Azza Gad.

⁷ Ex. 3.

⁸ Ex. 2. Azza Gad's daughter, Manar Gad is also included in the application, but Azza Gad is the primary person on the license.

⁹ Testimony of Azza Gad.

¹⁰ Ex. 4.

¹¹ Exs. 5, 7.

¹² *Id.*

¹³ Ex. 5.

denial of the nature and severity would place children in her care at risk for harm if she were granted a license.”¹⁴

9. On June 1, 2005, the Department issued an Order denying the application for a child care license. The stated reasons for the denial are:

Because Azza Gad knowingly withheld relevant information by failing to disclose the maltreatment determination and subsequent counseling she received, and in order to protect the health and safety of children served in DHS-licensed programs, your application to provide family child care is denied.¹⁵

10. On June 6, 2005, Azza Gad filed a timely request for appeal. In her appeal letter, she stated:

The problem that I had in the past was a personal family matter. It had been an issue that I had felt insecure about. My husband and I have solved our problems and moved forward. Right now I ‘m very happy and have a wonderful life. ...¹⁶

11. On June 9, 2005, the Department of Human Services issued the Notice of and Order for Hearing in this matter, setting the matter on for hearing before Administrative Law Judge Steve Mihalchick on September 21, 2005.

12. Azza Gad has not had any recurrence of the problems which occurred in the 1999 incident.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Hennepin County have complied with all procedural requirements of law and rule.

4. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the applicant has

¹⁴ Ex. 7.

¹⁵ Ex. 6.

¹⁶ Ex. 8.

complied fully with Minn. Stat. Chapter 245A and other applicable laws or rules and that the application should be approved and a license granted.¹⁷

5. The finding of maltreatment against Azza Gad does not constitute a disqualification from direct contact with persons served in licensed programs because the maltreatment was neither serious nor recurring.¹⁸ The Department is statutorily prohibited from disqualifying a person solely due to the person having had a mental illness.¹⁹

6. Minn. Stat. § 245A.05 sets out the standards for denial of an application and that statute states:

The commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation. An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the commissioner in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application...²⁰

7. The Applicant did not knowingly withhold relevant information or give false or misleading information in her application for child care licensure within the meaning of Minn. Stat. § 245A.05. The Applicant has demonstrated by a preponderance of the evidence that she has complied fully with the applicable law or rule and that the application should be approved and a license granted.

8. The communications difficulties experienced in the application process support the issuance of a conditional license to assure that future communications are clear between the Applicant and the Department.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

¹⁷ Minn. Stat. § 245A.08, subd. 3(b).

¹⁸ Minn. Stat. § 245C.15, subd. 4(b)(2).

¹⁹ Minn. Stat. § 245C.15, subd. 5.

²⁰ *Id.*, subd. 4(c).

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Order denying the application of Azza and Manar Gad for a license to provide child care be reversed and the application be GRANTED.

Dated this 3rd day of October, 2005.

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped (one tape)

MEMORANDUM

An important fact to note in this matter is that Azza Gad is not a native English speaker. The basis for the denial in this matter is the absence of information in several communications between County social workers and the Applicant. Having observed Azza Gad and her level of understanding, the ALJ has concluded that she did not intend to mislead the Department or the County regarding the information at issue.

Tim Hennessey, a Senior Social Worker for the County, testified that persons with mental health histories are scrutinized more closely to assess and understand the nature of the incident or problem. All the evidence in this record suggests that Azza Gad is fit to care for children. There was no indication that she was unfit to care for children at the time surrounding the 1999 incident. The maltreatment finding was not classified as serious and there has been no recurrence of the problems exhibited in the 1999 incident.

The evidence relied upon by the Department to support the assertion of providing false information in the application was initially characterized as “has there been anything in your past.”²¹ The form does not ask for that information. The hospital admission, evaluation, and prescription of medication were cited as the basis for concluding that Azza Gad provided false information.²²

The form, in pertinent part, asks whether the Applicant has “received counseling from any ... therapist [or] mental health center”²³ There is no evidence in this record indicating that Azza Gad did receive counseling.²⁴ From this record, she experienced

²¹ Testimony of Hennessey.

²² *Id.*

²³ Ex. 4.

²⁴ There is evidence regarding one or two subsequent visits to a psychiatrist at the time of the 1999 incident, but the substance of those visits is not in this record. There is no evidence that the psychiatrist engaged in counseling or referred Azza Gad for counseling.

an emotional outburst arising from a belief that infidelity occurred, which was manifested in a display of behavior intended to elicit a sympathetic response from her husband.

As to the wording on the form regarding counseling, the County indicated that it would “construe an encounter with Child Protection ... to be that sort of a context.”²⁵ The Child Protection case closing summary indicated that the Case Worker was conducting an investigation, not providing anything involving counseling.²⁶

The Department also relied upon the substance of the conversations between Remington and Azza Gad to support the assertion that she was concealing information in the background process. At the time of the first conversation, Azza Gad did not recall the 1999 incident. After thinking about that time and being reminded of it by her husband, she recalled the 1999 incident, but she still did not think that the incident should have an impact on her license application because it arose from a familial dispute that has long been resolved.²⁷

The County indicated that due to the “severity” of the incident, the Applicant should not be trusted to conduct licensed child care.²⁸ The 1999 incident was not considered severe at the time it occurred. There has been no recurrence of the problem. The maltreatment determination does not disqualify Azza Gad from being licensed to provide child care.

The Applicant has shown compliance with the standards required for licensure. The Department has shown that there is sufficient reason for concern that the license could be made conditional. The ALJ recommends that the Department GRANT the requested license.

S.M.M.

²⁵ Testimony of Hennessey.

²⁶ Ex. 3.

²⁷ Testimony of Azza Gad.

²⁸ Testimony of Hennessey.